

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

JEFFREY S. MANIACI,  
Plaintiff/Appellant,

v.

THOMAS DIROFF, and  
MANDY DIROFF,  
Defendants/Appellees

and

KENNETH G. SILER AND TONYA L.  
SILER REVOCABLE TRUST DATED  
APR 3, 2013,  
Appellee

Supreme Court Case No.: \_\_\_\_\_  
Court of Appeals Case No.: 333952  
Circuit Court Case No.: 14-7559-CH  
Honorable Thomas R. Evans

PHILIP L. ELLISON (P74117)  
OUTSIDE LEGAL COUNSEL PLC  
Attorney for Appellant  
PO Box 107  
Hemlock, MI 48626  
(989) 642-0055  
(888) 398-7003 - fax  
pellison@olcplc.com

ALEXANDER D. BOMMARITO (P62704)  
BOMMARITO LAW OFFICES PLLC  
Attorney for Siler Trust  
PO Box 189 · Freeland, MI 48623  
(989) 573-5300  
(855) 573-5373 - fax  
adb@freelandlaw.net

THOMAS AND MANDY DIROFF  
(No Appearance Filed)  
5619 Kaufman St  
Dearborn Heights, MI 48125

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**APPELLANT JEFFREY S. MANIACI'S  
APPLICATION FOR LEAVE TO APPEAL**

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**STATEMENT OF JURISDICTION**

This Court has jurisdiction to entertain this Application for Leave to Appeal pursuant to MCR 7.303(B)(1). The Court of Appeals had authorization to adjudicate the appeal pursuant to MCR 7.203(B)(1) and MCR 7.203(B)(4) when this Court remanded this matter with instructions to hear this appeal as if on leave granted. *Maniaci v Diroff*, \_\_\_ Mich \_\_\_, 898 NW2d 585 (2017). Copies of the Court of Appeals and trial court decisions are attached as required by Court Rule as Exhibits J and K.

**STATEMENT OF QUESTION PRESENTED**

- I. Under Michigan law, the conveyance of an easement gives to the grantee all such rights as are “incident or necessary to the reasonable and proper enjoyment of the easement.”

**QUESTION PRESENTED:**

Are the lower courts misapplying (and continuing to misapply) the easement test under *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33 (2005) when refusing to allow an easement holder to slightly alter the slope/grade of steep shoreline to physically permit *the actual* launching of watercraft by boat trailer when an easement expressly provides for the “launching of watercraft, *including by boat trailer?*”

**Appellant answers:            Yes**

**AUTHORITY:**

*Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33; 700 NW2d 364 (2005)  
*Harvey v Crane*, 85 Mich 316; 48 NW 582 (1891)

## INTRODUCTION

By a consent judgment, an express easement was granted to Appellant/Plaintiff Jeffrey S. Maniaci “for the temporary mooring and launching of watercraft, *including by boat trailer.*” **Exhibit B.** The resolution of the case expressly included the creation of an easement right to launch<sup>1</sup> boats by backing up a trailer into the waters of Secord Lake to launch watercraft—

*The 20 foot opening is specifically provided so that if a party easement holder wishes to, as part of the rights of ingress and egress, to launch a watercraft at that location a 20 foot wide opening would accommodate a trailer and the reasonable backing up abilities of the operator.*

**Exhibit A (Transcript), pp. 6-7.** Appellant/Plaintiff Jeffrey S. Maniaci had for years prior used Vonda Lane for access and enjoyment of Secord Lake with his boat until the now former neighbors changed the road-end approach on the watercourse. **Exhibit G.**

As of current, the land along the shore of the servient parcel, dubbed Parcel B, is too steep to launch his boat by boat trailer (given the alterations made by the Diroffs at the start of this lawsuit). Appellant/Plaintiff Maniaci, consistent with his easement rights granted by the Diroffs in the consent judgment, wanted to reasonably alter the slope of the shoreline to be actually able to launch his watercraft by boat trailer via the easement provided to him. **Exhibit B, ¶2; Exhibit E, ¶17.** Michigan law from this Court is clear: “the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement.” *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 41; 700 NW2d 364 (2005). Reasonable enjoyment of “ingress and egress to launch a watercraft” necessarily includes the ability to actually

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<sup>1</sup> Launch, as it applies to boats, means “to set (a boat or ship) in the water.” RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY (2001).

do so. After disputes arose, Appellant/Plaintiff Maniaci sought a post consent judgment declaration from the Circuit Court (as part of his second motion for contempt) that he did, in fact, have the right to launch his watercraft by boat trailer after slightly adjusting the grade of the shore back. The Circuit Court denied such a right even existed under *Blackhawk* or the Consent Judgment. The lower courts' decisions fail to follow black-letter law provided by this Court starting in *Harvey* over 100 years ago and reaffirmed more recently in *Blackhawk*. This case cries out for what should be a simple and direct resolution under *Blackhawk* and *Harvey*—the right to alter the slope/grade of steep shoreline to physically permit the actual launching of watercraft by boat trailer when an easement expressly expressly authorizes the same.

### FACTS / BACKGROUND<sup>2</sup>

This case started as a three-count complaint in the Gladwin County Circuit Court where Appellant/Plaintiff Maniaci sought declaratory and injunctive relief preventing Appellees Thomas and Mandy Diroff, the then owners of Lot 44 and 45, from blocking access to Secord Lake<sup>3</sup> via Vonda Lane (a private road), and to cease all unlawful interference with Appellant/Plaintiff Maniaci's easement and riparian rights provided by the plat. In lieu of a trial, these parties settled and the Circuit Court received the terms of

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<sup>2</sup> All reference to exhibits, except Exhibit G, H, and I, are the same exhibits attached to the *Second Motion to Hold Defendants in Contempt of Court; Entry of Award Attorney Fees & Costs Pursuant to the Contempt Statute; and Entry of a Declaration Allowing for Elevation Adjustment* in the lower court record. Exhibit G herein was attached as Exhibit B to the Reply in Support of *Second Motion to Hold Defendants in Contempt of Court; Entry of Award Attorney Fees & Costs Pursuant to the Contempt Statute; and Entry of a Declaration Allowing for Elevation Adjustment* in the lower court record. Exhibit H and I in the record as attached to the motion filed with this Court to add the Trust as a party after this case was remanded to this Court as if on leave granted.

<sup>3</sup> Secord Lake is the backwaters of the Tittabawassee River. References to the Tittabawassee River and Secord Lake mean the same body of water herein.

a proposed Consent Judgment (**Exhibit B**) on the day of trial (**Exhibit A**), held on April 28, 2015. The signed Consent Judgment provides, in pertinent part, that—

Diroff acknowledges or otherwise conveys in favor of the lot owners of the Supervisor's Plat of Baker's Resort (as recorded in Liber 6 of Plats, Page 29, Gladwin County Records), together with said lot owners' successors and assigns, **an appurtenant non-recreational easement for ingress and egress access to and from the Tittabawassee River** (a/k/a Secord Lake<sup>[4]</sup>) across Parcel B to and from Vonda Lane (hereinafter the "Easement"). The Easement shall hereafter run to and with each and every lot of the Supervisor's Plat of Baker's Resort, in perpetuity, for use by those within the Supervisor's Plat of Baker's Resort. **The Easement may also be used for the temporary mooring and launching of watercraft, including by boat trailer**, but may not be used for non-temporary mooring, docks, and/or wharfs.

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Diroff may maintain a split rail fence on the common boundary between Parcel B and the terminus point of Vonda Lane. The fence must contain a 20 feet opening in the middle of said fence to facilitate ingress and egress to and from the Tittabawassee River (a/k/a Secord Lake), **specifically to accommodate the use of a boat trailer**. The fence shall be reasonably constructed to maximize the view of the water.

**Exhibit B, ¶¶2-3 (highlighted)**. Specifically, as recited by the Diroffs' counsel on the record, the Diroffs agreed—

*The 20 foot opening [i.e. part of the easement] is specifically provided so that if a party easement holder wishes to, as part of the rights of ingress and egress, **to launch a watercraft at that location** a 20 foot wide opening would accommodate a trailer and the reasonable backing up abilities of the operator.*

**Exhibit A, p. 6, lines 23-35 through p. 7, lines 1-2**. In exchange for this easement, Appellant/Plaintiff Maniaci dropped certain claims in his complaint.

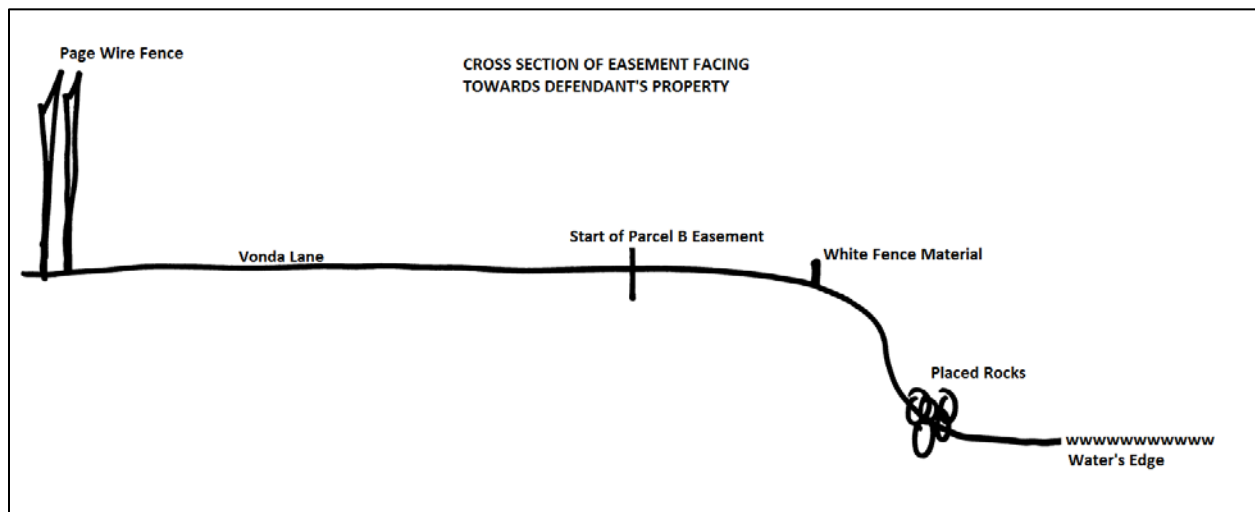
Since entry of the Consent Judgment, the Diroffs failed to comply with its commands and a prior motion for contempt was heard. It resulted in the Circuit Court issuing an additional order commanding that "the barriers shall be removed and the road opened by twelve noon on August 31, 2015." **Exhibit D** (hereinafter the "FEB 4 ORDER");

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<sup>4</sup> See Footnote 3.

see also **Exhibit C**. Since August 2015, the Diroff Appellees still had not completely complied with the Circuit Court's Consent Judgement or the FEB 4 ORDER. Appellant/Plaintiff Maniaci again filed for contempt in April 2016.

Just before the case was started, Vonda Lane/Parcel B naturally and easily sloped to the water's edge of Secord Lake. **Exhibit G**. However, immediately prior to the lawsuit being commenced, the Diroff Appellees brought in truckloads of earthen fill artificially creating a substantial drop off from the easement to the water. See **Exhibit F**<sup>5</sup>; compare **Exhibits E-5 and E-6 with Exhibit G**. As it stands today, a cross section of easement area on Vonda Lane/Parcel B, as near the water, is approximately as follows:



As such, it is impossible to enjoy and utilize to the easement, as it exists today (and at the time of the entry of the Consent Judgment), to launch a boat by trailer. See **Exhibit E**, ¶17. Based upon this evidence, this was conceded by the Diroffs' trial counsel. **Transcript, May 9, 2016, p. 85**. Photographs confirm the concession.

<sup>5</sup> Exhibit F is a CD with three digital videos which was previously filed with the Court of Appeals Clerk by mail given TrueFiling will not accept video attachments. These videos are and have been part of the lower court record throughout, see Footnote 2.





**Exhibit E, Photo #5.**



**Screenshot from Exhibit F, Video File Named IMG\_1381 (at 00:00:09).** The practical problem is not difficult to fathom; Appellant/Plaintiff Maniaci wants to be able to

actually use the easement on Vonda Lane/Parcel B for the purpose as expressly granted to him—to launch his boat by his boat trailer. After all, he had been explicitly granted “non-recreational easement for ingress and egress access to and from the Tittabawassee River (a/k/a Secord Lake) across Parcel B to and from Vonda Lane” including the “launching of watercraft, including by boat trailer...” **Exhibit B, ¶12**. However, the current slope/grade of the land prevents this. **Exhibit E, ¶17**. To state the obvious, too steep a slope causes a boat and its trailer to get enduringly stuck. To those who never pulled a boat trailer, here is an example of how having too steep a slope will plague an owner trying to back his boat on a boat trailer on steep property:



A boat owner stuck on a steep slope cannot pull forward or go backwards; they simply become stuck. In his motion, Appellant/Plaintiff Maniaci sought a declaration that he had the lawful authority to alter/adjust the slope/grade of Parcel B to permit the safe launching of his boat by a trailer consistent with the Consent Judgment.

The Circuit Court held a hearing and worked with the parties to resolve or otherwise adjudicate the various issues on the motion, most of which are not being challenged here.



This resulted in an order entered on July 11, 2016 (hereinafter the "JULY 11 ORDER").<sup>6</sup>

**Exhibit J.** The Circuit Court took action on Appellant/Plaintiff Maniaci's request. After hearing arguments of the parties, the Circuit Court concluded:

THE COURT: But then that still does leave us with the dispute as to should the plaintiff be allowed to go in and to rework the grade at the site of this, "boat launch." And you rely on the *Blackhawk* case, Mr. Ellison, for the proposition, that hey, we had an easement to use this part of the -- the land adjacent to the river as a boat launch and we can't -- including, there is language in paragraph three of the consent judgment that makes reference to including for purposes of a trailer or using a trailer to wheel, it doesn't specify but to use a trailer to launch a boat; doesn't specifically say to wheel a-- a boat down to the water's edge.

Apparently both parties are in agreement and the defendant's lawyer, Mr. Carey in fact said, well, no one in their -- he put it quite colorfully, it wasn't no one in there right it was anyone with a lick of sense, no one with a lick of sense would try to back a trailer with a boat on it down to the water's edge there because you would sink into the sand.

**The Court nevertheless does not think that having an easement granted to use an area as a boach (sic) -- boat launch conveys with it the right to regrade the grade or reslope the grade of the land leading down to that boat launch anymore than it conveys with it a right to blacktop or pave that area of the land adjacent to the river.** And the Court finds that the *Blackhawk* case does not stand for that proposition. And implicitly you use the word reasonable Mr. Ellison when you said you think the consent judgment conveys with it or implies the right to take reasonable steps to -- that are necessary to use the -- that area -- to use the easement for the purpose granted in the easement. The boat launching and regrading of the slope or resloping the grade, this Court does not find to be necessarily reasonable use of the land that is conveyed or implied in the conveyance of the easement. And so, the Court denies that portion of your motion that prayed for relief in your motion. Is there anything else that the Court should address sir?

MR. ELLISON: I was gonna -- I guess would ask your Honor, if my -- my client has an easement right to trailer boats in and out, out of there, if he goes in and does that now, and say the boat, you know, drops off the edge, as I -- as I outlined in that, what would be his ability to utilize that easement if he use -- if he can't do that now? I mean you can't do that now with the land is situated, how would he be able to utilize that right that that he is basically precluded from doing so?

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<sup>6</sup> This is the order being challenged.

THE COURT: I would assume and I don't mean to create an agreement when both parties seem to be, in fairness to you, Mr. Carey does seem to acknowledge, it would be very difficult to use this portion of the river, the land next to the river for purposes of boat launching the way it is. You on behalf of your client, the plaintiff, say I don't think we can use it. In fairness to you, the defendant, also seems to say, I agree, I think it would very hard to use. But having said that, I'm sure there is equipment, it might not be feasible equipment but I'm sure there is equipment that could be used to launch a boat, to back a boat trailer down to the river's edge and to launch a boat there.

MR. ELLISON: Okay. So just, I'm -- I guess I want to be clear because my client wants to move forward being of access the right to be able to launch -- to launch and-- and utilize the easement right that he has. You're just saying he can't change the- slope of the land but there are other ways-- if there's other ways to be able to do that without changing the slope of the land, he would be permitted to do so?

THE COURT: Yes.

MR. ELLISON: Okay.

THE COURT: Now whether that entails bringing in a huge earth -- not earth moving equipment but some huge piece of equipment to get his boat down to the water's edge, which might do more harm than good. I mean, I don't see anything in the judgment that prohibits.

**Transcript, May 9, 2016, pp. 82-86.** Appellant/Plaintiff Maniaci appealed. This Court remanded this case to the Court of Appeals as if on leave granted. *Maniaci v Diroff*, \_\_ Mich \_\_; 898 NW2d 585 (2017). After remand, it was discovered that the Diroffs had sold their property to another. On motion, the Court of Appeals ordered the new owner's addition as a party-appellee. See *Maniaci v Diroff*, unpublished order of the Court of Appeals, issued Aug 28, 2017 (Docket No. 333952)(Event No. 24). As evidenced by the deeds, the Trust received the disputed property subject to all easements, reservations, and restrictions of record. See **Exhibits H and I** (in the record as Exhibits C and D to the COA motion to add the Trust as a party-appellee after remand from the Supreme Court). As an added party, the outcome of this appeal binds to the Trust, as well as the Diroffs.

On May 15, 2018, the Court of Appeals held that “[a]pplying the reasoning of *Blackhawk Dev Corp* to the present case, the trial court here did not clearly err in finding that adjusting the grade of Parcel B is unnecessary for plaintiff’s reasonable use of the easement.” *Maniaci v Diroff*, unpublished decision of the Court of Appeals, issued May 15, 2018 (Docket No. 333952), slip opn at \*5. The panel correctly held that the easement “expressly permits launch of watercraft by boat trailer” but then discussed that watercraft was not defined “for purposes of the easement.” *Id.* Thusly, according to the panel, “plaintiff’s desire to back his boat trailer all the way to the water’s edge does not make it a requirement of effectively using the easement.” *Id.* That makes no sense whatsoever. **Exhibit A, p. 6, lines 23-35 through p. 7, lines 1-2; Exhibit B, ¶2.** In other words, the panel applied the *Blackhawk* test incorrectly. This *Application for Leave* now follows.

### STANDARD OF REVIEW

This Court has discretion whether to grant leave on this Application or take other action on the same. MCR 7.303(B)(1); MCR 7.305(H)(1). Consent judgments effectuating those agreements are construed the same as contracts. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Construction of a contract is reviewed de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). Questions of law are also reviewed de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass’n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

### ARGUMENT

**I. Adjusting the grade/slope of the shoreline is incident and/or necessary to properly enjoy the express easement for the “launching of watercraft, including by boat trailer.”**

The relevant legal standard is simple: “the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper

enjoyment of the easement.” *Blackhawk*, supra, at 41; 700 NW2d 364 (2005); see also *Harvey*, supra. “The making of... improvements necessary to the effective enjoyment of an easement... is incidental to and part of the easement.” *Mumrow v Riddle*, 67 Mich App 693, 700; 242 NW2d 489 (1976).<sup>7</sup> In other words, this Court has confirmed that an easement holder can make improvements to the servient estate that are necessary “for the effective use of the easement” that do not “unreasonably burden” the servient estate even if not expressly stated in the four corners of the document. *Blackhawk*, supra, at 41.

The Consent Judgment undisputedly provides an express easement to Appellant/Plaintiff Maniaci for the “launching of watercraft, including by boat trailer.” **Exhibit B, ¶2.** An easement is the right to use the land of another for a specified purpose. *Bowen v Buck & Fur Hunting Club*, 217 Mich App 191, 192; 550 NW2d 850 (1996). “A party who enjoys an easement is entitled to maintain it so that it is capable of the use for which it was given.” *Morse v Colitti*, 317 Mich App 526, 545; 896 NW2d 15 (2016). In other words, “[t]he extent of the easement is defined in the easement agreement and the grantee of an easement has all rights to the reasonable and necessary use of the right-of-way within the purpose of the easement.” *Panhandle E Pipe Line Co v Musselman*, 257 Mich App 477, 484; 668 NW2d 418 (2003)(emphasis added). Moreover, when a contract creates an easement (in this case via a consent judgment), it is not necessary that the parties expressly agree on each and every detail; the law can and does supply any missing details by construction. E.g. *Nichols v Seaks*, 296 Mich 154, 159; 295 NW 596 (1941). In this instance, the law of easements unambiguously provides that a grant

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<sup>7</sup> The corollary is also true: the Dicroffs (and now the Trust), as the fee owner, do not hold an “unrestricted veto power over the improvements sought to be made.” *Carlton v Warner*, 46 Mich App 60, 62; 207 NW2d 465 (1973).

of an easement also automatically and impliedly conveys all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement. *Blackhawk*, *supra*, at 41; see also *Unverzagt v Miller*, 306 Mich 260, 265; 10 NW2d 849 (1943)(same). The same principles have been applied for easements created by court settlements. *DMC v Int'l Transmission Co*, unpublished decision of the Court of Appeals, issued Feb 19, 2008 (Docket No. 274450).<sup>8</sup> For more than 100 years, the law of easements has held that easements automatically and additionally embrace all rights as are incident or necessary to the reasonable and proper enjoyment; it has remained constant in our State's jurisprudence for more than a century.<sup>9</sup> See *Harvey*, *supra*.

The Court of Appeals has essentially misapplied *Blackhawk* to the great detriment of Appellant/Plaintiff Maniaci, which serves as a basis for this Court to take action. MCR 7.305(B)(3), (5)(a), and (5)(b). In *Blackhawk*, this Court expressed and applied a two-step test: 1.) whether the proposed developments are necessary for the holder's effective use of its easement and, 2.) if the developments are necessary, whether they unreasonably burden the servient estate. *Id.*, at 42. The answers to these inquiries "originate in the language... of the grant." *Id.*

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<sup>8</sup> This unpublished case is cited for a principle not otherwise seen in other published easement cases in which an easement was created (or not created) in court rather than by conveyance by deed or reservation. MCR 7.215(C). Citing to this case will aid the Court in reaching the correct conclusion in this case.

<sup>9</sup> In *Harvey*, the Supreme Court held an easement holder's construction of a fence was a reasonable means of securing her beneficial use of an easement granted for the driving of cattle and horses because the erection of a fence is a necessary incident to the reasonable enjoyment of the easement. *Harvey*, *supra*, at 322.

**A. Appellees have granted an easement later erroneously rendered destroyed by the Circuit Court’s misapplication of the *Blackhawk* test.**

Here, the Appellees gave Appellant/Plaintiff Maniaci an easement right for launching of watercraft, *including by boat trailer*. In granting this easement, the Appellees also granted “all such rights as are incident or necessary to the reasonable and proper enjoyment of” right to actually launch watercraft. By the slope/grade of the land being steep, launching a watercraft by boat trailer requires a relatively simple adjustment of the grade/slope of the land at the shoreline—one that simply is more flat than steep. The first element of *Blackhawk* test—whether the proposed developments are necessary for the holder’s effective use of its easement—was essentially conceded by the Diroffs’ trial counsel. **Transcript, May 9, 2016, p. 85** (“[Diroffs’ counsel] does seem to acknowledge, it would be very difficult to use this portion of the river, the land next to the river for purposes of boat launching the way it is.”). That element of necessity is fulfilled.<sup>10</sup>

As for the second element—whether the use unreasonably burdens the servient estate—was also properly fulfilled. The Appellees did not offer (and will not today offer) any suggestion that an adjustment to the grade of the last few feet of the easement at the shoreline unreasonably burdened the servient estate; they neither suggested nor showed any harm would befall their property, structures, or land in Lots 44 and 45.<sup>11</sup>

As such, it is incident and necessary to adjust the grade of the land at the shore to permit the very activity granted by the Diroff Appellees in the Consent Judgment—to

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<sup>10</sup> The Court of Appeals seemed to base its decision (incorrectly) on not being necessary contrary to the party concessions. *Maniaci v Diroff*, unpublished decision of the Court of Appeals, issued May 15, 2018 (Docket No. 333952), slip opn at \*5.

<sup>11</sup> Instead, it was clear the Diroffs legally wanted to benefit from a lack of a trial and also not have to accept the easement as contemplated and negotiated by the parties resulting in the Consent Judgment.

launch watercraft by boat trailer. By the Circuit Court not permitting the alteration of the slope/grade of the shoreline, the purpose and use of the easement—to launch watercraft by boat trailer—is now thwarted despite the easement *expressly* providing for such an activity for Appellant/Plaintiff Maniaci.

The Court of Appeals erred in changing and misapplying the *Blackhawk* test. The Diroffs conceded the necessary aspect of the change. **Transcript, May 9, 2016, p. 85.** As such, the only question before the Court of Appeals was whether adjusting the slope/grant is an “unreasonably burden the servient estate.” Instead, the panel—focusing on the wrong prong—denied the adjustment because “plaintiff’s desire to back his boat trailer all the way to the water’s edge does not make it a requirement of effectively using the easement.” As such, both the Court of Appeals and the Circuit Court erred.<sup>12</sup>

The error undertaken by the lower courts have effectively ignored or altered the standards of how easements are applied and effectuated. Appellant/Plaintiff Maniaci entered into this settlement premised upon the law of easements as it existed. His and

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<sup>12</sup> The classic ‘law school’ example is the driveway and the tree. The owner of Whiteacre grants a ten foot drive way easement along the boundary of this land to his Neighbor. Neighbor, as an easement holder, wants to, undoubtedly, utilize the driveway but a large tree is right in the middle of the conveyed driveway’s path. Unless the tree is removed, the use of the easement cannot occur. Yet, the easement granted by Whiteacre’s owner is silent as the tree. What result? Applying the *Blackhawk and Harvey* test, the conveyance of an easement includes all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement. Therefore, the easement conveys with it, by law, the right to remove the tree to reasonably and properly enjoy the driveway easement.

This case is similar. It was clearly understood by the parties that an easement was being granted by the Diroff Appellees (as predecessors to the Siler Trust). **Appellant Brief, Exhibit B.** It was also understood this included the right to launch<sup>12</sup> boats by backing up a trailer into the waters of Secord Lake to launch watercraft. **Appellant Brief, Exhibit A (Transcript), pp. 6-7** (statement of settlement by Diroffs’ counsel). Thusly, Appellant/Plaintiff Maniaci was expressly conveyed an easement right for launching of watercraft, *including by boat trailer*. In granting this easement, the Appellees also granted, by law, “all such rights as are incident or necessary to the reasonable and proper enjoyment of” right *to actually launch watercraft*. A relatively simple adjustment to the slope/grade of the land is incident/necessary to actually permit the reasonable and proper enjoyment of launching a watercraft by boat trailer



society's interest in being able to rely on established precedent is at its apex with regard to judicial precedents that exposit property rights. See *Oregon ex rel State Land Bd v Corvallis Sand & Gravel Co*, 429 US 363, 381 (1977). Decisions like *Blackhawk* (and its over one hundred-year-old predecessor *Harvey*) become rules of property, and many titles may be injuriously affected by their change." *United States v Title Ins & Trust Co*, 265 US 472, 486 (1924). The lower courts are changing the mandatory standards of *Blackhawk* relied upon by Appellant/Plaintiff Maniaci with new adjustments that are contrary to established precedence. Settlements and deeds are literally losing their validity on the whims of courts refusing to correctly apply the *Blackhawk* test. Leave is requested. MCR 7.303(B)(3).

#### RELIEF REQUESTED

WHEREFORE, in light of the plain language of the Consent Judgment and the incident or necessary test from *Harvey* and *Blackhawk*, this Court is requested peremptorily reverse the Court of Appeals and remand with instructions to the trial court to correct apply to the *Blackhawk* test. As part of those instructions, the Court is requested to direct the trial court to correct its error in not properly deeming it is incident or necessary to adjust/regrade the land near the shore of Secord Lake to allow this easement holder to undertake that which was express provided—"launching of [Maniaci's] watercraft, including by boat trailer" via the Consent Judgment. MCR 7.305(H)(1). Alternatively, the Court is requested to grant full leave to hear this important legal issue. *Id.*



Date: June 26, 2018

RESPECTFULLY SUBMITTED:

*Philip L Ellison*

---

OUTSIDE LEGAL COUNSEL PLC  
BY PHILIP L. ELLISON (P74117)  
Attorney for Appellant Maniaci  
PO Box 107 · Hemlock, MI 48626  
(989) 642-0055  
(888) 398-7003 - fax  
pellison@olcplc.com



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STATE OF MICHIGAN  
55<sup>TH</sup> JUDICIAL CIRCUIT COURT, GLADWIN COUNTY

JEFFREY S. MANIACI,

Plaintiff/Counter-Defendant,

v

File No. 14-7559-CH

THOMAS DIROFF and MANDY DIROFF,

Defendants/Counter-Plaintiffs,

/

**SETTLEMENT**

BEFORE THE HONORABLE THOMAS R. EVANS, CIRCUIT JUDGE  
Gladwin, Michigan - Tuesday, April 28, 2015

APPEARANCES:

For the Plaintiff:

MR. PHILIP L. ELLISON (P74117)  
Attorney at Law  
Post Office Box 107  
Hemlock, Michigan 48626  
(989) 642-0055

For the Defendants:

MR. WILLIAM L. CAREY (P31602)  
Attorney at Law  
2373 South I-75 Business Loop  
Post Office Drawer 665  
Grayling, Michigan 49738  
(989) 348-5232

Recorded by Nicole Mishler - CEO 8195  
Transcribed by Mandi S. Bergman - CER 4844  
(989) 426-7451

*Mandi S. Bergman*  
*Certified Electronic Recorder*  
*55<sup>th</sup> Judicial Circuit Court - Family Division*  
*17<sup>th</sup> Judicial District Probate Court*  
*Gladwin, Michigan*

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WITNESSES:

PAGE

None

EXHIBITS:

IDENTIFIED

ADMITTED

1 Gladwin, Michigan

2 Tuesday, April 28, 2015 - 10:48 a.m.

3 COURT OFFICER CHERRY: All rise. Fifty-fifth  
4 Circuit Court for the County of Gladwin is now in session,  
5 the Honorable Thomas R. Evans presiding.

6 THE COURT: Good morning, you may be seated.  
7 Calling the case of Jeffrey Maniaci, et al versus Thomas  
8 Diroff and Mandy Diroff, et al, file number 14-7559-CH.  
9 Would counsel identify for the record please?

10 MR. ELLISON: Philip Ellison appearing on behalf of  
11 the plaintiff, your Honor.

12 MR. CAREY: Your Honor, William Carey appearing on  
13 behalf of the Diroffs who are here both as a defendant and a  
14 counter-plaintiff.

15 THE COURT: Thank you sir. Today is the date and  
16 time scheduled for a bench trial in this matter, but the  
17 attorneys have been working diligently with their respective  
18 clients throughout the morning and it's my understanding  
19 there's a settlement that the parties wish to place on the  
20 record?

21 MR. CAREY: Yes. It will be easier for me to do  
22 that with a demonstrative exhibit and I've asked my client to  
23 grab it for me.

24 THE COURT: Okay. Thank you.

25 MR. CAREY: So it'd just be that long of a delay.

1 THE COURT: Thank you sir. And Mr. Maniaci, would  
2 you please stand and raise your right hand to be sworn?

3 CLERK MISHLER: Do you solemnly swear the testimony  
4 you're about to give will be the truth, the whole truth and  
5 nothing but the truth?

6 MR. MANIACI: Yes, I do.

7 THE COURT: Could you tell us your name sir?

8 MR. MANIACI: Jeffrey S. Maniaci.

9 THE COURT: You may be seated. And ma'am, would  
10 you please raise your right hand to be sworn?

11 CLERK MISHLER: Do you solemnly swear the testimony  
12 you're about to give will be the truth, the whole truth and  
13 nothing but the truth?

14 MS. DIROFF: Yes.

15 THE COURT: Could you tell us your name?

16 MS. DIROFF: Mandy Diroff.

17 THE COURT: You may be seated ma'am. And sir,  
18 would you please raise your right hand to be sworn?

19 CLERK MISHLER: Do you solemnly swear the testimony  
20 you're about to give will be the truth, the whole truth and  
21 nothing but the truth?

22 MR. DIROFF: Yes.

23 THE COURT: Could you tell us your name?

24 MR. DIROFF: Thomas Diroff.  
25

1 THE COURT: You may be seated as well. You may  
2 proceed Mr. Carey.

3 MR. CAREY: Thank you, your Honor. Your Honor,  
4 this matter involves property located in the Supervisor's  
5 Plat of Baker's Resort and this is a enlarged copy of the  
6 plat.

7 In particular, your Honor, there's a portion of the  
8 plat known as Vonda Lane that sits approximately between lots  
9 45 and 46 in that same subdivision. And there is an  
10 additional parcel that is the subject of this litigation that  
11 lies between Vonda Lane and the water's edge of the  
12 Tittabawassee River, and that parcel, your Honor, has been  
13 described as Parcel B.

14 THE COURT: Parcel B?

15 MR. CAREY: Parcel B.

16 THE COURT: As in boy?

17 MR. CAREY: As in boy. Parcel B of course has a  
18 meets and bounds description and that meets and bounds  
19 description will be repeated in the consent judgment that we  
20 will prepare for the Court.

21 THE COURT: Thank you sir.

22 MR. CAREY: Parcel B is going to be the subject of  
23 a nonrecreational ingress and egress easement. Fee title to  
24 Parcel B will vest in the counter-plaintiffs Diroff.  
25 However, fee title will be subject to this nonrecreational

1 ingress and egress easement. The easement will be pertinent  
2 and will run in perpetuity. The easement will be in favor of  
3 the lot owners within the platt--Supervisor's Plat of Baker's  
4 Resort.

5 With respect to that easement, routine maintenance  
6 of the easement will be both the right and the responsibility  
7 of the fee title holder Diroff. However, the--to the extent  
8 that any allowed usage of the easement creates damage to the  
9 surface of the easement the party creating that damage is  
10 responsible for restoring the surface of the easement to its  
11 current status quo.

12 At the junction of the east boundary of Vonda Lane  
13 and the west boundary of Parcel B, which is a common line,  
14 there will be a f--there is a fence and there will continue  
15 to be a fence. The current fence is a wire type of  
16 structure, the Diroff's contemplate replacing that wired  
17 structure fence with a split rail fence at that common  
18 boundary line. And that split rail fence will run north and  
19 south across the width of Vonda Lane, which is approximately  
20 50 feet plus or minus. But that fence will have a 20 foot  
21 wide opening so as to allow the ingress and egress over  
22 Parcel B.

23 The 20 foot opening is specifically provided so  
24 that if a party easement holder wishes to, as part of the  
25 rights of ingress and egress, to launch a watercraft at that

1 location a 20 foot wide opening would accommodate a trailer  
2 and the reasonable backing up abilities of the operator.

3 There will not be, at the water's edge of Parcel B,  
4 which would otherwise be the east boundary of Parcel B, there  
5 will not be any nontemporary mooring of watercraft, nor will  
6 there be any form of docke--of dock or wharf at that  
7 location.

8 There is, your Honor, currently a north--and  
9 east/west fence that is located approximately, but perhaps  
10 not precisely, on the common boundary line between lot 45 and  
11 platted Vonda Lane. If and when--I should say when that  
12 fence is replaced, the Diroffs will locate it so that it is  
13 on the boundary line between Vonda Lane and lot 45. It may  
14 or it may not be there now. There is a disagreement over  
15 that but the current fence may remain in its location. When  
16 it is replaced it will be located at that common line.

17 There are, on both sides, the north and the south  
18 side of Vonda Lane, there are ditches and those ditches serve  
19 from time-to-time to facilitate drainage from the  
20 neighborhood and no party will be allowed to utilize those  
21 drains in any manner that would preclude reasonable drainage  
22 from those drains to the Tittabawassee River--no blockage of  
23 those drains.

24 If I could have just a moment to consult with my  
25 client?



1 THE COURT: Sure.

2 MR. CAREY: We're satisfied that that sets forth  
3 the terms of the proposed consent judgment, your Honor.

4 THE COURT: And Mr. Ellison, is that your  
5 understanding of the settlement agreement as well?

6 MR. ELLISON: Mr. Carey, I think has accurately  
7 proffered the broad terms of the agreement here. I would  
8 just add one additional note just to clarify a point that he  
9 made and he is talking about the replacement fence on we  
10 call--what we're calling the north/south fence with the 20  
11 foot gap, that that would be--he may have said it, I didn't  
12 catch it--it would be a split rail fence so that goal of this  
13 type of fence was that it would be the views of the area  
14 would re--remain reasonably open for purposes of ingress and  
15 egress on this.

16 MR. CAREY: To--

17 MR. ELLISON: Other--

18 MR. CAREY: Go ahead.

19 MR. ELLISON: I'm sorry. Other than that I think  
20 he's accurately put forth the broad strokes and it is the  
21 intention of the parties to reduce this with the assistance  
22 of counsel to a consent judgment for entry by this Court.

23 THE COURT: Is that correct Mr. Carey?

24 MR. CAREY: Yes, sir.

25

1 THE COURT: Do you wish to inquire of your clients  
2 Diroff or not?

3 MR. CAREY: Yes, please.

4 THE COURT: You may proceed sir.

5 MR. CAREY: May I address them collectively?

6 THE COURT: Sure.

7 MR. CAREY: Mr. and Mrs. Diroff, have you said--  
8 have you heard everything that I've placed on the record?

9 THE COURT: Ms. Diroff, would you please come  
10 forward and have a seat at the table.

11 MR. CAREY: She's trying hard to avoid the front  
12 row.

13 THE COURT: Thank you.

14 MR. CAREY: Mr. and Mrs. Diroff, have you heard the  
15 terms of our agreement that I placed of record?

16 MS. DIROFF: Yes.

17 MR. DIROFF: Yes.

18 MR. CAREY: And did you hear Mr. Ellison, counsel  
19 for plaintiff make the modification or make more specific  
20 that consent agreement?

21 MR. DIROFF: Yes.

22 MS. DIROFF: Yes.

23 MR. CAREY: Do you agree with that which has been  
24 placed of record?

25 MS. DIROFF: Yes.

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MR. DIROFF: Yes.

MR. CAREY: And you'll sign a consent judgment to that effect when prepared?

MS. DIROFF: Yes.

MR. DIROFF: Yes.

MR. CAREY: Thank you.

THE COURT: Thank you sir. And Mr. Ellison, did you wish to inquire of your client?

MR. ELLISON: I do, your Honor. Cou--again, very similar questions as Mr. Carey just proffered his client, you've been here today working on a settlement negotiation with the opposing parties regarding the issues in the Baker's Resort, correct?

MR. MANIACI: Correct.

MR. ELLISON: And--and today you have reached a settlement and have directed me to place the settlement on the record today, correct?

MR. MANIACI: Correct.

MR. ELLISON: And the settlement that you heard Mr. Carey recite and as well as I clarified slightly, represents the broad strokes of the agreement that the--that you intended to put on the record today and will agree to abide by those terms?

MR. MANIACI: Yes.

1 MR. ELLISON: And if--when presented with a consent  
2 judgment reflecting those terms, that you would sign the  
3 consent judgment accordingly, correct?

4 MR. MANIACI: Yes.

5 MR. ELLISON: I'm satisfied, your Honor.

6 THE COURT: And sir, could you tell us your name  
7 once again?

8 MR. MANIACI: Jeffrey S. Maniaci.

9 THE COURT: Thank you, sir. Well, very well then.  
10 This will be reduced to a consent judgment, is that correct,  
11 Mr. Carey?

12 MR. CAREY: Yes, your Honor, it is.

13 THE COURT: Will you be preparing that document?

14 MR. CAREY: I'll certainly make the first draft and  
15 make it available to counsel for any corrections he sees  
16 necessary.

17 THE COURT: All right. Mr. Maniaci and Mr. and Ms.  
18 Diroff, I have no idea how this case would have turned out if  
19 there had been a trial because I did not hear any of the  
20 evidence. But I do know that the three of you, with the able  
21 assistance of your lawyers, came up with a very, very  
22 detailed agreement. And I think it's highly unlikely that  
23 this Court would have come up with such a highly detailed  
24 ruling. So, in other words, I'm just commenting, I think the  
25 three of you took advantage of the opportunity that you had

1 to tailor an agreement that really suited the needs of all  
2 three of you. And in that regard, you certainly were very  
3 ably assisted by experienced and very learned and zealous  
4 attorneys who gave you good advice. But I think it's a  
5 credit to the three of you that you were able to sit down  
6 together and reason together and reach an agreement that all  
7 three of you can live with even if you're, perhaps, not 100  
8 percent satisfied. Because I think it's highly unlikely  
9 anybody would have been 100 percent satisfied with the  
10 decision of this Court either. So, good luck to all three of  
11 you. I'll sign the order or judgment on presentation. Good-  
12 -good luck to all of you.

13 MR. CAREY: Thank you, your Honor.

14 UNIDENTIFIED SPEAKER: Thank you.

15 MR. ELLISON: Thank you, your Honor.

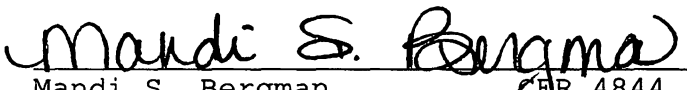
16 COURT OFFICER CHERRY: ALL RISE.

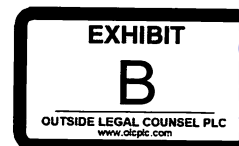
17 (At 11:02 a.m., proceedings concluded)  
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1 STATE OF MICHIGAN)  
2 )  
3 COUNTY OF GLADWIN)

4 I certify that this transcript, consisting of 13 pages  
5 is a complete, true, and correct transcript, to the best of my  
6 ability, of the proceedings and testimony taken in this case on  
7 Tuesday, April 28, 2015.

8  
9 May 15, 2015

  
Mandi S. Bergman CER 4844  
55<sup>th</sup> Circuit Court - Family Division  
17<sup>th</sup> Judicial District Probate Court  
401 West Cedar Avenue  
Gladwin, Michigan 48624  
(989) 426-7451



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STATE OF MICHIGAN  
IN THE 55th CIRCUIT COURT FOR THE COUNTY OF GLADWIN

JEFFREY S. MANIACI,  
Plaintiff/Counter-Defendant,

v

THOMAS DIROFF and  
MANDY DIROFF,  
Defendants/Counter-Plaintiffs.

File No: 14-7559-CH  
Hon. Thomas R. Evans

A TRUE COPY  
55th CIRCUIT COURT

JUN 22 2015

GLADWIN COUNTY CLERK  
LAURA BRANDON-MAVEAL

OUTSIDE LEGAL COUNSEL, P.L.C.  
By: Philip L. Ellison (P74117)  
Attorney for Plaintiff /Counter-Defendant  
P.O. Box 107  
Hemlock, MI 48626  
(989) 642-0055

CAREY & JASKOWSKI, P.L.L.C.  
By: William L. Carey (P31602)  
Attorney for Defendants/  
Counter-Plaintiffs  
2373 S. I-75 Business Loop  
P.O. Drawer 665  
Grayling, MI 49738  
(989) 348-5232

CONSENT JUDGMENT

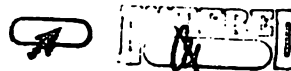
At a session of said Court  
held on the 18<sup>th</sup> day of JUNE, 2015  
in the Circuit Court for the County of Gladwin, State of Michigan

PRESENT: Honorable Thomas R. Evans  
Circuit Court Judge

THIS HONORABLE COURT having convened on April 28, 2015 at 9:00 a.m. to conduct a trial in this pending cause, the Court having been advised that the parties herein have reached an agreement to consent to judgment, and the Court having otherwise been fully advised in the premises;

NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Fee title to Parcel B, as hereinafter described, vests in Defendant/Counter-Plaintiffs, Thomas B. Diroff and Mandy J. Diroff (hereinafter "Diroff"). Parcel B is more completely described as:



Part of the East 1/2 of the Northeast 1/4 of Section 35, T20N-R1E, Clement Township, Gladwin County, Michigan, described as: Commencing at the Northeast Corner of Lot 45 of the Supervisor's Plat of Baker's Resort, according to the recorded plat thereof, as recorded in Liber 6 of Plats, Page 29, of the Gladwin County, Michigan, public Records; thence N89E04'00"W, along the North line of said Lot 45 and also being the South line of Vonda Lane, 76.87 feet to contour line 755.8 feet (NAVD-88) and the Point of Beginning; thence continuing N89E04'00"W, along the extension of the South line of said Vonda Lane, 17.1 feet, more or less, to the water's edge of the Tittabawassee River; thence Northeasterly, along said water's edge, 52.2 feet, more or less, to the Westerly extension of the North line of Vonda Lane; thence N89E52'41"E, along the Westerly extension of the North line of Vonda Lane, 19.15 feet, more or less, to contour line 755.8 feet (NAVD-88); thence S18E24'08"W, along the estimated original contour line, 53.16 feet to the point of Beginning. Containing 0.02 acres, more or less, and being subject to any restrictions, reservations, easements, rights-of-way, and zoning or governmental regulations of record.

2. Notwithstanding, Diroff acknowledges or otherwise conveys in favor of the lot owners of the Supervisor's Plat of Baker's Resort (as recorded in Liber 6 of Plats, Page 29, Gladwin County Records), together with said lot owners' successors and assigns, an appurtenant non-recreational easement for ingress and egress access to and from the Tittabawassee River (a/k/a Secord Lake) across Parcel B to and from Vonda Lane (hereinafter the "Easement"). The Easement shall hereafter run to and with each and every lot of the Supervisor's Plat of Baker's Resort, in perpetuity, for use by those within the Supervisor's Plat of Baker's Resort. The Easement may also be used for the temporary mooring and launching of watercraft, including by boat trailer, but may not be used for non-temporary mooring, docks, and/or wharfs.

3. Diroff may maintain a split rail fence on the common boundary between Parcel B and the terminus point of Vonda Lane. The fence must contain a 20 feet opening in the middle of said fence to facilitate ingress and egress to and from the Tittabawassee River (a/k/a Secord Lake), specifically to accommodate the use of a boat trailer. The fence shall be reasonably constructed to maximize the view of the water.

4. Routine maintenance of the Easement will be both the right and the responsibility of Diroff. However, to the extent that any usage of the Easement creates damage to the surface of the Easement, the person(s) creating that damage shall be responsible for restoring the Easement to its pre-damaged state.

5. A fence owned by Diroff, which is currently located outside Lot 45 of the Supervisor's Plat of Baker's Resort, may be maintained in its current location until the fence is to be replaced. When said fence is replaced, it must be re-located back to the common boundary of Lot 45 and the southern edge of Vonda Lane.



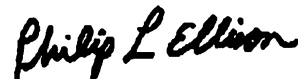
6. On both the north and the south sides of Vonda Lane and Parcel B, there are ditches and those ditches serve from time-to-time to facilitate water drainage from the neighborhood. No party will be allowed to utilize those drains in any manner that would preclude reasonable drainage from those drains to the Tittabawassee River or otherwise cause blockage of those drains.

7. All necessary leave is hereby granted to permit this Consent Judgment to be recorded in the permanent records of the Gladwin County Register of Deeds.

8. Except as otherwise noted herein, every party herein waives all claims, asserted or not asserted, against every other party herein which exists known or unknown, as of April 28, 2015.

THIS JUDGMENT CONSTITUTES A FINAL ORDER AND RESOLVES ALL CLAIMS RAISED IN THE CASE AT BAR.


Dated: June 18, 2015



06/18/2015

By: Philip L. Ellison (P74117)  
Attorney for Plaintiff/Counter-Defendant


Dated: June 18, 2015



By: William L. Carey (P31602)  
Attorney for Defendants/Counter-Plaintiffs

IT IS SO ORDERED.

Dated: June 18, 2015



Hon. Thomas R. Evans (P38525)  
Circuit Court Judge



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STATE OF MICHIGAN

IN THE 55TH JUDICIAL CIRCUIT COURT FOR GLADWIN COUNTY

JEFFREY S. MANIACI,

Plaintiff,

v File No. 14-7559-CH

THOMAS DIROFF and MANDY DIROFF,

Defendants./

MOTION

BEFORE THE HONORABLE THOMAS R. EVANS, CIRCUIT JUDGE

Gladwin, Michigan - Tuesday, August 25, 2015

APPEARANCES:

For the Plaintiff: MR. PHILIP L. ELLISON (P74117)  
Outside Legal Counsel, PLC  
PO Box 107  
Hemlock, MI 48626  
(989) 642-0055

For the Defendants: MR. WILLIAM L. CAREY (P31602)  
Carey & Jaskowski, PLLC  
2373 S. I-75 Business Loop  
PO Box 665  
Grayling, MI 49738  
(989) 348-5232

RECORDED BY: Nichole Sheehan, CEO-8195

TRANSCRIBED BY: Rhonda L. Reppert, CER-3468  
Certified Electronic Reporter  
Gladwin, MI 48624  
(989) 426-6025

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WITNESSES:

PAGE

None.

EXHIBITS:

None.

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Argument, by Mr. Carey, in Opposition of Plaintiff's Motion	5
Response, by Mr. Ellison	8
Court's Order	9

1 Gladwin, Michigan

2 Tuesday, August 25, 2015 - 1:42 p.m.

3 \*\*\*

4 COURT OFFICER SIMPSON: All rise. 55th Circuit  
5 Court for the County of Gladwin is now in session, the  
6 Honorable Thomas R. Evans presiding.

7 THE COURT: Good afternoon. You may be seated.  
8 Calling the case of Jeffrey S. Maniaci versus Thomas Diroff  
9 and Mandy Diroff, file 14-7559-CH. Would counsel identify  
10 for the record, please?

11 MR. ELLISON: Yes. Good afternoon, Your Honor.  
12 Philip Ellison appearing on behalf of the plaintiff.

13 MR. CAREY: Good afternoon, Your Honor. William  
14 Carey appearing on behalf of the defendant/counter-  
15 plaintiffs who are seated to my right with me here today.

16 THE COURT: And the plaintiff is in the courtroom  
17 as well?

18 MR. ELLISON: That is correct, Your Honor. He is  
19 sitting to my right as well.

20 THE COURT: Good afternoon, everyone. We appear  
21 here today for a hearing on the plaintiff's motion to hold  
22 the defendants in contempt of court and for entry of an  
23 award of attorney fees and costs pursuant to the contempt  
24 statute, and the Court has had the chance to meet in  
25 chambers with both of the attorneys together.

1           Is there anything you wanted to add, sir, to your  
2 written motion?

3           MR. ELLISON: Yes, Your Honor, just very briefly.

4           THE COURT: Thank you, Mr. Ellison.

5           MR. ELLISON: Yes, thank you. You did correctly  
6 recite the issue today that is before the Court on a motion  
7 regarding contempt. I would -- we had discussed in chambers  
8 the idea of an evidentiary hearing, and I am just going to  
9 simply offer, as an offer of proof, the attached photographs  
10 to the motion, Exhibits A, B and C.

11           The Court may recall that there was a consent  
12 judgment entered on the record. I have attached the  
13 transcript from that hearing back in April, late April. We  
14 are now in August at this point. Basically I guess I would  
15 ask the Court, because there was no specific timelines for  
16 compliance by the defendants in this matter to reopen the  
17 easement, essentially the issue is, we need -- we believe  
18 the issue of reasonable time has gone by. If the Court may  
19 recall, there was an issue as to the use of the road, use of  
20 Parcel B, and access to the water. The parties did agree  
21 that an easement would be opened and certain parties had  
22 certain rights in this respect.

23           As it stands today, from what I understand from my  
24 client as an offer of proof that the fence still exists  
25 there today, and as a result we would ask the Court to find

1 the idea that that fence does need to come down and that the  
2 letter of the consent judgment -- every letter of the  
3 consent judgment needs to be followed here in this respect.

4 My understanding is Mr. Carey is going to offer  
5 some argument on this as well. I would minimally ask the  
6 Court to direct that the fence does come down and that the  
7 parties do comply with the consent judgment, and I leave it  
8 to the Court's discretion as to whether to impose a finding  
9 of contempt.

10 THE COURT: Thank you, sir.

11 MR. ELLISON: Thank you.

12 MR. CAREY: May I, Your Honor?

13 THE COURT: Yes, Mr. Carey.

14 MR. CAREY: Your Honor, I think it's important for  
15 the Court to know that I have represented Mr. and Mrs.  
16 Diroff for well over a year now, and I have gotten to know  
17 them, and they are very law abiding. They are very  
18 respectful of this Court and they would never intend to be  
19 disrespectful to either Your Honor or to an order of the  
20 Court.

21 What we have -- facts in a case sometimes matter,  
22 and here are the facts that bring us to the table today. We  
23 did place -- I was standing right there. We placed a  
24 settlement, a detailed settlement, on this Court's record on  
25 April 21st. It took 60 days after placing that settlement



1 on the record, and only after a motion for entry of judgment  
2 was filed by me, on behalf of my clients, to get a consent  
3 judgment before the Court for signature.

4 Very unfortunately, during that time frame -- and  
5 I think if my client were to testify he would tell you that  
6 on April 27th he injured himself lifting a very heavy piece  
7 of equipment and has been nearly immobile since that day.  
8 He has treated -- we have medical records to support this,  
9 if necessary. He has treated with two separate back  
10 specialists and is scheduled to undergo some -- sounds very  
11 painful and looks very painful -- some injections into his  
12 back in an attempt to regain any sense of mobility beyond  
13 walking from his car to this courtroom. That injury,  
14 coupled with two other things, I think offers some context  
15 to this motion.

16 Plaintiff, since this litigation started, acquired  
17 a different cottage and parcel within this same subdivision  
18 that provides him with immediate access to the water. Now,  
19 that doesn't excuse our compliance with a consent judgment  
20 that we are very much happy with, and want every portion of  
21 it to be the continuing order of this Court. But it -- the  
22 acquisition of the direct lake access by the plaintiff, the  
23 injury that my client suffered, the reasonably long delay in  
24 having a judgment entered at all certainly gave us an  
25 impression, apparently false, that there was not an urgency

1 to the opening of that fence, and had -- I mean, my clients  
2 live right next to the road. Not a single person came to  
3 them and said, before filing this motion, hey, open the  
4 fence for us. And I would have liked to have seen it  
5 resolved that way. It hasn't been resolved that way.

6 I have counseled with my clients. I have no  
7 objection to placing them under oath and they can offer this  
8 to you as well. They will have that fence opening, as  
9 required by the consent judgment, opened this weekend and  
10 they will hire people to have that done because my client is  
11 not in a position physically to accomplish that himself.  
12 But if that's the urgency, and the apparent need at which  
13 the plaintiff wants and needs to proceed here, then that's  
14 what we will do. But I think a finding of contempt under  
15 these circumstances would be inappropriate, particularly as  
16 plaintiff's counsel candidly acknowledges, the plaintiff  
17 never bargained for a date of compliance. Under these  
18 circumstances, reasonableness -- a term of time for  
19 compliance, I think reasonableness is the correct test, but  
20 facts matter, and those facts of the medical injury, the  
21 apparent non-need of the plaintiff for this access to enjoy  
22 his summertime, the fact that a motion is filed without a  
23 contact by plaintiffs, I think those all dictate that we  
24 haven't exceeded the reasonable period of compliance, and I  
25 am -- as an officer of this court and as my client's

1 representative here -- advising the Court on this matter,  
2 the opening will be taken care of this weekend.

3 THE COURT: Thank you, both. Anything further,  
4 Mr. Ellison?

5 MR. ELLISON: No. I guess I would just note, Your  
6 Honor, that again I think Mr. Carey is correct in his  
7 analysis of this as reasonableness, and I understand now  
8 with the assertion they are putting on the record that work  
9 will be done very shortly.

10 My client's biggest concern, of course, is the  
11 fact that this summer has been lost to this access that was  
12 bargained for as part of, you know, being resolved in April.  
13 I guess I would leave it to the Court to make its decision  
14 on what to do.

15 THE COURT: Anything further, Mr. Carey?

16 MR. CAREY: No, but thank you, Your Honor.

17 THE COURT: Very well. From what you indicated  
18 then, Mr. Carey, your clients are of the position that the  
19 barrier could be removed and the road opened by this coming  
20 Monday by noon?

21 MR. CAREY: Yes, sir.

22 THE COURT: And keeping in mind, Mr. Ellison, what  
23 you have already indicated, that your client is concerned  
24 about the lost -- losing a portion of the summer as it is,  
25 as a practical point of view, it would appear that there's

2 right whatever time has been lost as of today. And so what  
3 the Court will do, there was some degree of vagueness in the  
4 agreement that was placed on the record back in April, and I  
5 am not being critical of either attorney or either party in  
6 making that observation. That's true of most agreements,  
7 frankly. Not every "I" is crossed, not every "T" is -- not  
8 every "I" is dotted, not every "T" is crossed, because why  
9 should it be? We expect people to be able to work things  
10 out.

11 Also, although there was some degree of time-lapse  
12 before the consent judgment was presented, Mr. Ellison did  
13 notify apposing counsel and the Court in chambers that there  
14 was a degree of time-lapse between the ordering of the  
15 transcript and the actual preparation of the transcript,  
16 which did not occur until the latter part of May or the  
17 second half of May. So there was no undue delay in the  
18 preparation of the transcript or in the filing of the  
19 motion.

20 I don't think there are enough facts presented  
21 from the two offers of proof to conclude that the defendants  
22 are deliberately flouting the Court's order or that contempt  
23 sanctions are necessary.

24 What the Court will do then is order that the  
25 barriers be removed and the road opened by twelve noon on

1 this coming Monday, August 31st, 2015. If it can be done  
2 sooner, great. And I accept as true both offers of proof.  
3 That will be the order of the Court then.

4 With regard to sanctions or economic costs, it  
5 will be the order of the Court that each party shall be  
6 responsible for bearing the costs of its own legal fees and  
7 other costs.

8 Is there anything further that you want to have  
9 addressed at this time, Mr. Ellison?

10 MR. ELLISON: I guess just may I prepare an order  
11 and submit it under 7-day?

12 THE COURT: Sure. Mr. Carey, is that acceptable  
13 to you?

14 MR. CAREY: It is, Your Honor.

15 MR. ELLISON: Maybe I will even forward it to him  
16 first. Perhaps we can get a consent on it and submit it as  
17 a signed stipulated order based on the Court's order today.

18 THE COURT: All right. Would you prefer that,  
19 Mr. Carey?

20 MR. CAREY: Either method is fine. I can assure  
21 the Court an order is not going to be necessary to comply  
22 with the premises we've made during court today.

23 THE COURT: Okay. Thank you both for being here.

24 MR. CAREY: Thank you.

25 MR. ELLISON: Thank you, Your Honor.

1 THE COURT: And Mr. Maniaci and Mr. and Mrs.  
2 Diroff, I read through the transcript of the hearing and I  
3 did note at the time we were here in April I complimented  
4 all three of you and both attorneys for being able to sit  
5 down together and reason together and resolve the case and I  
6 was sincere in my compliments to you at that time. I know  
7 this is frustrating to everybody, especially Mr. Maniaci.  
8 You appear to be especially frustrated. But I do compliment  
9 you once again on being able to resolve the matter, and good  
10 luck to all of you.

11 MR. CAREY: Thank you, Judge.

12 MR. ELLISON: Thank you.

13 (At 1:55 p.m., proceedings concluded)  
14  
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1 STATE OF MICHIGAN )  
2 ) ss.  
3 COUNTY OF GLADWIN )

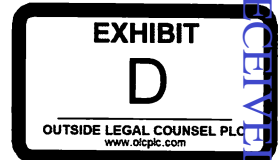
4 I certify that this transcript, consisting of 12 pages, is a  
5 complete, true, and correct transcript, *to the best of my ability*,  
6 of the proceedings taken in this case on Tuesday, August 25, 2015,  
7 by Nicole Sheehan, CEO-8195.

8  
9 Dated: November 23, 2015

10  
11 

12 Rhonda Reppert, CER-3468  
13 Certified Electronic Reporter  
14 Gladwin, MI 48624  
15 (989) 426-6025  
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**STATE OF MICHIGAN  
IN THE 55th CIRCUIT COURT FOR THE COUNTY OF GLADWIN**



JEFFREY S. MANIACI,  
Plaintiff/Counter-Defendant,

v

THOMAS DIROFF and  
MANDY DIROFF,  
Defendants/Counter-Plaintiffs.

File No: 14-7559-CH A TRUE COPY  
Hon. Thomas R. Evans 55th CIRCUIT COURT

FEB -4 2016

OUTSIDE LEGAL COUNSEL, P.L.C.  
By: Philip L. Ellison (P74117)  
Attorney for Plaintiff /Counter-Defendant  
P.O. Box 107  
Hemlock, MI 48626  
(989) 642-0055

GLADWIN COUNTY CLERK  
LAURA BRANDON MAVEAL  
CAREY & JASKOWSKI, P.L.L.C.  
By: William L. Carey (P31602)  
Attorney for Defendants/  
Counter-Plaintiffs  
2373 S. I-75 Business Loop  
P.O. Drawer 665  
Grayling, MI 49738  
(989) 348-5232

**ORDER FOLLOWING HEARING HELD ON AUGUST 25, 2015**

At a session of said Court held on the 25<sup>th</sup> day of August, 2015  
in the Circuit Court for the County of Gladwin, State of Michigan

PRESENT: Honorable Thomas R. Evans, Circuit Court Judge

Before the Court on August 25, 2015 was Plaintiff's motion for entry of order of contempt of Court. Upon discussion of matters off the record within the Court's Chambers and hearing further arguments on the record, the Court orders as follows:

1. That the barriers shall be removed and the road opened by twelve noon on August 31, 2015; and
2. That each party shall bear its own costs and legal fees related to this motion.

**IT IS SO ORDERED.**

Date: 2/04/2016

Thomas R. Evans  
Honorable Thomas R. Evans  
Circuit Court Judge

RECEIVED by MSC 6/26/2018 5:43:17 PM



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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GLADWIN

JEFFREY S. MANIACI,  
Plaintiff,

Case No.: 14-7559-CH  
Honorable Thomas R. Evans

v.

AFFIDAVIT

THOMAS DIROFF and  
MANDY DIROFF,  
Defendants

\_\_\_\_\_ /

AFFIDAVIT OF JEFFREY S. MANIACI

State of Michigan                                )  
County of Macomb                            ) ss.

Jeffrey S. Maniaci, being duly sworn, states:

1. I am the Plaintiff in the above-referenced case.
2. As I understood the decision of the Court the last time this case was heard, this Court ordered THOMAS DIROFF and MANDY DIROFF (the Diroffs) to remove the barriers existing in the easement and open the same by August 31, 2015.
3. The last time the parties were in court was because the Diroffs were blocking use of the easement.
4. Since that time, the Diroffs have failed to obey and continues to place and/or not remove items in the easement seemingly for the purpose to block my and my neighbors' access to Secord Lake.
5. The easement was specifically agreed upon and incorporated into the *Consent Judgment* in this case.
6. On December 31, 2015, my wife and I visited and found the easement again still blocked. See **Exhibit 1**.
7. On January 2, 2016, the easement was again blocked by two waverunner hoists placed block our access to Secord Lake. See **Exhibit 2**.
8. Now that the spring thaw has occurred and the *Order Following Hearing Held on August 25, 2015* was signed on February 4, 2016, additional obstructions have either been erected or not removed in compliance with this Court's order.
9. In addition to the photographs referenced herein, my attorney is submitting videos of the recent improper interference of the easements on Vonda Lane.

10. In violation of the *Consent Judgment* and the *Order Following Hearing Held on August 25, 2015*, signed February 4, 2016, the easement is still, again, blocked by a wooden structure. **Exhibit 3** (taken April 15, 2016)
11. In violation of the *Consent Judgment* and the *Order Following Hearing Held on August 25, 2015*, signed February 4, 2016, the easement is still, again, blocked by a small white fence material affixed to the ground with wooden stakes. **Exhibit 4** (taken April 15, 2016)
12. In violation of the *Consent Judgment* and the *Order Following Hearing Held on August 25, 2015*, signed February 4, 2016, the easement is still, again, blocked by rocks placed in the path of ingress and egress area. **Exhibits 5 and 6** (taken April 15, 2016).
13. In violation of the *Consent Judgment* and the *Order Following Hearing Held on August 25, 2015*, signed February 4, 2016, the easement is still, again, blocked by recreational boating equipment placed in the ingress and egress area. **Exhibit 7** (showing the lifts in the easement to the left of the boundary marker) (taken April 15, 2016).
14. The items, as placed by Diroffs, interfere with my use of the easement as agreed upon by the parties to this litigation, i.e. ingress and egress to Secord Lake.
15. I would simply move the offending items but the items are not mine and I do not want to cause any issues with the Diroffs, despite violations of the Court's orders.
16. In addition, the Diroffs has caused a page-wire fence to continue exist on the property when the *Consent Judgment* in this case specifically limits the Diroffs to only maintaining a split-rail fence.
17. This summer, I would like to be able to use the easement, as agreed upon, for the launching my boat but I will need to alter the property elevations to permit the actual launching into the water.
18. I am requesting this Court confirm that I may do so as my attorney legally explains in the filing with the Court.
19. I am requesting this Court to hold the Diroffs in contempt and use the full authority of this Court to command full compliance with the *Consent Judgment* and the *Order Following Hearing Held on August 25, 2015*, signed February 4, 2016, and order full reimbursement of my attorney fees and costs.
20. If sworn, I could testify competently to the facts contained within this affidavit and in the photographs depicted as attached hereto based upon my personal knowledge.

Jeffrey S. Maniaci  
Jeffrey S. Maniaci, Affiant

4-18-2016  
Date

Signed and sworn to before me, this 18 day of April, 2016 by Jeffrey S. Maniaci

Notary's Signature: [Signature]

Notary's Name: \_\_\_\_\_

Notary public BASHAR GAGGO Notary Public - Michigan \_\_\_\_\_ County \_\_\_\_\_ State of Michigan

Acting in \_\_\_\_\_ My Commission Expires Jul 4, 2017 \_\_\_\_\_, Michigan

Acting in the County of Oakland  
My commission expires \_\_\_\_\_

(SEAL)  
[Faint circular notary seal]



























**NOTICE OF EXHIBIT F**

Exhibit F (a CD rom with videos) has been submitted by separate mailing directly to the Clerk of the Court.



EXHIBIT  
G





I hereby certify that I have searched the records in my Office relating to the description of lands in the within Instrument and from such examination it appears that The taxes have been fully paid for five years preceding The date of said Instrument.

Gladwin, MI  
**JUN 20 2016**  
Gladwin County Treasurer

Except for current taxes due & payable in the Township & Cities. Subject to notification of Homestead Tax Denial



Received on 6/20/2016 at 4:11 PM

**Liber: 1078 Page: 874**

STATE OF MICHIGAN - GLADWIN COUNTY

RECORDED

Ann Manning - REGISTER OF DEEDS  
6/20/2016 4:13 PM



Receipt #: 101829 Page: 1 of 2  
1415.20 WARRANTY DEED



GLADWIN COUNTY  
June 20, 2016  
RECEIPT #101829

STATE OF MICHIGAN  
REAL ESTATE  
TRANSFER TAX

# \$178.20-CO  
# \$1,215.00-ST  
STAMP #31196

EXHIBIT

H

OUTSIDE LEGAL COUNSEL PLC  
www.olepc.com

RECORDED by MSC 6/26/2018 5:43:17 PM

## WARRANTY DEED

Know all Persons by these presents: That **Thomas B. Diroff AKA Thomas Bernard Diroff and Mandy Jean Diroff by Thomas Bernard Diroff her attorney in fact, husband and wife**

whose address is: 5619 Kaufman Rd., Dearborn Heights, MI 48125

**conveys and Warrants to Kenneth G. Siler and Tonya L. Siler, husband and wife**

whose address is: 19610 Rosevelt Rd., Merrill, MI 48637

the following described premises:

**Situated in the Township of Clement, Gladwin County, Michigan, described as follows:**

**Lots 44 and 45 of Supervisor's Plat of Baker's Resort, as per plat thereof recorded in Liber 6, Page 29, Gladwin County Records.**

**AND**

**Part of the East 1/2 of the Northeast 1/4 of Section 35, T20N, R1E, described as:**

**Commencing at the Southeast corner of Lot 44 of the Supervisor's Plat of Baker's Resort, according to the recorded plat thereof, as recorded in Liber 6 of Plats, Page 29, Gladwin County Records; thence South 88°20'31" West, along the South line of said Lot 44, 133.86 feet to contour line 755.8 feet (NAVD-88) and the Point of Beginning; thence continuing South 88°20'31" West, along the extension of the South line of said Lot 44, 20.8 feet, more or less to the water's edge of the Tittabawassee River; thence Northeasterly along said water's edge, 112.0 feet, more or less to the Westerly extension of the North line of Lot 45; thence South 89°04'00" East, along the Westerly extension of the North line of Lot 45, 17.1 feet more or less, to contour line 755.8 feet (NAVD-88); thence Southwesterly along said contour line 755.8 feet (NAVD-88) to the Point of Beginning.**

**AND**

**Part of the East 1/2 of the Northeast 1/4 of Section 35, T20N, R1E, described as:**

**Commencing at the Northeast corner of Lot 45 of the Supervisor's Plat of Baker's Resort, according to the recorded plat thereof, as recorded in Liber 6 of Plats, Page 29, Gladwin County Records; thence North 89°04'00" West along the North line of said Lot 45 and also being the South line of Vonda Lane, 76.87 feet to contour line 755.8 feet (NAVD-88) and the Point of Beginning; thence continuing North 89°04'00" West along the extension of the South line of said Vonda Lane, 17.1 feet, more or less to the water's edge of the Tittabawassee River; thence Northeasterly along said water's edge, 52.2 feet, more or less to the Westerly extension of the North line of Vonda Lane; thence North 89°52'41" East, along the Westerly extension of the North line of Vonda Lane, 19.15 feet, more or less to contour line 755.8 feet (NAVD-88); thence South 18°24'08" West, along the estimated original contour line, 53.16 feet to the Point of Beginning.**

for the full consideration of: \$162,000.00

**Subject to easements, reservations and restrictions of record**

The Grantor grants to the Grantee the right to make ( ) divisions under section 108 of the land division act, Act No. 288 of the Public Acts of 1967. (If no number is inserted, the right to make divisions stays with the portion of the parent tract retained by the grantor; if all of the parent tract is conveyed, then all division rights are granted)

This property may be located within the vicinity of farmland or farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

Dated: 06/17/2016



**Seller(s)**

*Thomas B. Diroff AKA Thomas Bernard Diroff*  
 Thomas B. Diroff AKA Thomas Bernard Diroff  
*Mandy Jean Diroff by Thomas Bernard Diroff her attorney in fact*  
 Mandy Jean Diroff by Thomas Bernard Diroff her attorney in fact

**State of Michigan****County of Gladwin**

The foregoing instrument was acknowledged before me this 17th day of June, 2016, by  
 Thomas B. Diroff AKA Thomas Bernard Diroff and Mandy Jean Diroff by Thomas  
 Bernard Diroff her attorney in fact, husband and wife.

*Karen J. Stroh*

KAREN J. STROH  
 Notary Public, Gladwin County, MI  
 Acting in Gladwin County  
 My Commission Expires Jan. 9, 2018

Notary Public

\_\_\_\_\_ County, \_\_\_\_\_

acting in \_\_\_\_\_ County

My commission expires:

Drafted by:

Thomas B. Diroff AKA Thomas Bernard Diroff  
 5619 Kaufman Rd.  
 Dearborn Heights, MI 48125

File Number: 1629215-G



Liber: 1081 Page: 825

STATE OF MICHIGAN - GLADWIN COUNTY

RECORDED

Ann Manning - REGISTER OF DEEDS  
7/28/2016 12:13 PMReceipt #: 102462 Page: 1 of 3  
20.00 QUIT CLAIM DEEDOUTSIDE LEGAL COUNSEL PLC  
www.olicplc.com

FILED by MSC 6/26/2018 5:43:17 PM

**QUITCLAIM DEED**

The Grantors, Kenneth G. Siler and Tonya L. Siler, husband and wife, of 19610 Roosevelt Road, Merrill, Michigan 48637, quitclaim to the Grantee, the Kenneth G. Siler and Tonya L. Siler Revocable Living Trust dated April 3, 2013, of 19610 Roosevelt Road, Merrill, Michigan 48637, the premises located in Clement Township, Gladwin County, Michigan described as follows:

Lots 44 and 45 of Supervisor's Plat of Baker's Resort, as per plat thereof recorded in Liber 6, Page 29, Gladwin County Records.

AND

Part of the East 1/2 of the Northeast 1/4 of Section 35, T20N, R1E, described as: Commencing at the Southeast corner of Lot 44 of the Supervisor's Plat of Baker's Resort, according to the recorded plat thereof, as recorded in Liber 6 of Plats, Page 29, Gladwin County Records; thence South 88°20'31" West, along the South line of said Lot 44, 133.86 feet to contour line 755.8 feet (NAVD-88) and the Point of Beginning; thence continuing South 88°20'31" West, along the extension of the South line of said Lot 44, 20.8 feet, more or less to the water's edge of the Tittabawassee River; thence Northeasterly along said water's edge, 112.0 feet, more or less to the Westerly extension of the North line of Lot 45; thence South 89°04'00" East, along the Westerly extension of the North line of Lot 45, 17.1 feet more or less, to contour line 755.8 feet (NAVD-88); thence Southwesterly along said contour line 755.8 feet (NAVD-88) to the Point of Beginning.

AND

Part of the East 1/2 of the Northeast 1/4 of Section 35, T20N, R1E, described as: Commencing at the Northeast corner of Lot 45 of the Supervisor's Plat of Baker's Resort, according to the recorded plat thereof, as recorded in Liber 6 of Plats, Page 29, Gladwin County Records; thence North 89°04'00" West along the North line of said Lot 45 and also being the South line of Vonda Lane, 76.87 feet to contour line 755.8 feet (NAVD-88) and the Point of Beginning; thence continuing North 89°04'00" West along the extension of the South line of said Vonda Lane, 17.1 feet, more or less to the water's edge of the Tittabawassee River; thence Northeasterly along said water's edge, 52.2 feet, more or less to the Westerly extension of the North line of Vonda Lane; thence North 89°52'41" East, along the Westerly extension of the North line of Vonda Lane, 19.15 feet, more or less to contour line 755.8 feet

(NAVD-88); thence South 18°24'08" West, along the estimated original contour line, 53.16 feet to the Point of Beginning,

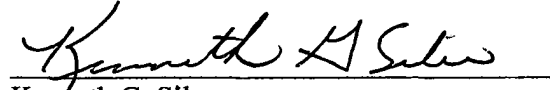
commonly known as 4369 Earl Road, Alger, Michigan, for the full consideration of ZERO (\$0.00) DOLLARS, subject to all restrictions, reservations, easements and other encumbrances of record or in common use.

The Grantor grants to the Grantee the right to make the maximum number of lawful divisions under Section 108 of the Michigan Land Division Act, Act No. 288 of the Public Acts of 1967, as amended.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

This instrument is exempt from County Transfer Tax by virtue of MCL 207.505(a) and State Transfer Tax by virtue of MCL 207.526(a).

Dated: July 21, 2016

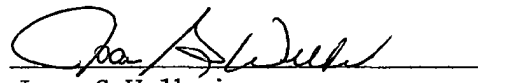
  
Kenneth G. Siler

Dated: July 21, 2016

  
Tonya L. Siler

STATE OF MICHIGAN            )  
COUNTY OF SAGINAW        )

The foregoing instrument was acknowledged before me this 21 day of July, 2016, by Kenneth G. Siler and Tonya L. Siler, husband and wife.

  
Joan S Welke  
Notary Public  
Saginaw County, Michigan  
Acting in the County of Saginaw  
My Commission Expires: 12/30/2017

**NOTE:**

**THIS DEED HAS BEEN PREPARED AT THE REQUEST OF THE GRANTOR WITHOUT EXAMINATION OF POSSIBLY RELEVANT MATTERS (INCLUDING STATUS OF TITLE, ENVIRONMENTAL CONDITION AND SURVEY).**

---

When Recorded Return to:  
David J. Kolat  
David J. Kolat PLC  
6420 Normandy Drive  
Saginaw, MI 48638

Send Subsequent  
Tax Bills to:  
Grantee

Drafted by:  
David J. Kolat (P36655)  
David J. Kolat PLC  
6420 Normandy Drive  
Saginaw, MI 48638  
(989) 791-3452

---

Tax Parcel # 070-060-000-044-00

Recording Fee \$ 20.00

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Transfer Tax: State \$0.00  
County \$0.00

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FILED by MSC 6/26/2018 5:43:17 PM

STATE OF MICHIGAN  
IN THE 55th CIRCUIT COURT FOR THE COUNTY OF GLADWIN

JEFFREY S. MANIACI,  
Plaintiff/Counter-Defendant,

v

File No: 14-7559-CH  
Hon. Thomas R. Evans

THOMAS DIROFF and  
MANDY DIROFF,  
Defendants/Counter-Plaintiffs.

A TRUE COPY  
55th CIRCUIT COURT

JUL 11 2016

OUTSIDE LEGAL COUNSEL, P.L.C.  
By: Philip L. Ellison (P74117)  
Attorney for Plaintiff /Counter-Defendant  
P.O. Box 107  
Hemlock, MI 48626  
(989) 642-0055

CAREY & JASKOWSKI  
By: William L. Carey (P31602)  
Attorney for Defendants/  
Counter-Plaintiffs  
2373 S. I-75 Business Loop  
P.O. Drawer 665  
Grayling, MI 49738  
(989) 348-5232

GLADWIN COUNTY CLERK  
KIMBERLY BRANDON-MAVEAL

ORDER FOLLOWING MOTION HEARING HELD POST-JUDGMENT

At a session of said Court held on the 9<sup>th</sup> day of May, 2016  
in the Circuit Court for the County of Gladwin, State of Michigan

PRESENT: Honorable Thomas R. Evans, Circuit Court Judge

Before the Court was Plaintiff's *Second Motion to Hold Defendants in Contempt of Court; Entry of Award Attorney Fees & Costs Pursuant to the Contempt Statute; and Entry of a Declaration Allowing for Elevation Adjustment*. Upon reviewing the briefs, the evidence submitted by counsel, and holding oral argument, the Court orders as follows:

1. That Defendants' sawhorse may remain but must be placed on the waterside of the line between Parcel B and Vonda Lane but that said sawhorse may be moved to allow for the use the express easement outlined in the Consent Judgment entered by this Court;<sup>1</sup>
2. That Plaintiff Maniaci shall have the authority to remove the white, silt fence contained on/near Vonda Lane and/or Parcel B;<sup>2</sup>

<sup>1</sup> Transcript, May 9, 2016, p. 59-60.

<sup>2</sup> Transcript, May 9, 2016, p. 60.

3. That Plaintiff Maniaci shall have the authority to remove any rocks contained on Vonda Lane and/or Parcel B which impedes use of the express easement outlined in the Consent Judgment entered by this Court;<sup>3</sup>
4. That Defendants' boat hoist(s) shall not exist or rest in the twenty-foot portion on the water's edge of Parcel B at any time, but may exist or rest outside the twenty-foot portion on the water's edge of Parcel B solely from November through March (winter months).<sup>4</sup>
5. That Defendants' page-wire fence running across Vonda Lane (which contains a twenty-foot opening) is not required to be moved from its current location or replaced with a split-rail fence to be located at the common boundary between Parcel B and the terminus point of Vonda Lane at this time.<sup>5</sup>
6. That the request for a finding of contempt and for an award of costs and attorney fees is denied.
7. That the email cited and attached to Defendants' response to Plaintiff's motion is of little probative value and is stricken pursuant to MCR 408;<sup>6</sup>
8. Plaintiff's request for a declaratory ruling that Plaintiff may adjust the grade/slope of the land on Parcel B to reasonably utilize the express easement (outlined in the Consent Judgment entered by this Court) for the launching of watercraft, including by boat trailer, is denied because having an easement granted to use an area as a boat launch does not convey with it the right to regrade or reslope the grade of land, as explained on the record.<sup>7</sup>

**IT IS SO ORDERED.**

Date: 7/11/2016

Thomas R. Evans  
Honorable Thomas R. Evans  
Circuit Court Judge

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<sup>3</sup> Transcript, May 9, 2016, p. 61.

<sup>4</sup> Transcript, May 9, 2016, p. 61-62.

<sup>5</sup> Transcript, May 9, 2016, p. 74.

<sup>6</sup> Transcript, May 9, 2016, p. 82.

<sup>7</sup> Transcript, May 9, 2016, p. 84-85.

STATE OF MICHIGAN  
COURT OF APPEALS

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JEFFREY S. MANIACI,

Plaintiff-Appellant,

v

THOMAS DIROFF and MANDY DIROFF,

Defendants-Appellees,

and

KENNETH G. SILER AND TONYA L. SILER  
REVOCABLE TRUST,

Appellee.

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UNPUBLISHED  
May 15, 2018

No. 333952  
Gladwin Circuit Court  
LC No. 14-007559-CH

Before: METER, P.J., and GADOLA and TUKEL, JJ.

PER CURIAM.

Plaintiff, Jeffrey S. Maniaci, appeals as on leave granted the trial court's post-judgment order denying his request to adjust the grade of waterfront property owned by appellee Kenneth G. Siler and Tonya L. Siler Revocable Trust (the Trust), in which plaintiff possesses an easement. We affirm.

I. FACTS

This case arises from a dispute involving a roughly rectangular strip of land, referred to as Parcel B, located on Secord Lake, which is part of the water system of the Tittabawassee River. Parcel B lies adjacent to the water's edge, and Vonda Lane is a public road that ends at Parcel B. The Trust owns Lot 45, which is adjacent to Parcel B. Plaintiff owns non-lakefront property in the same subdivision in which Lot 45 and Parcel B are located.

In 2014, plaintiff initiated this action before the trial court asserting the right to use Parcel B to access Secord Lake and the Tittabawassee River. At that time, Lot 45 was owned by

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defendants, Thomas and Mandy Diroff (the Diroffs),<sup>1</sup> who filed a counterclaim asserting ownership of Parcel B. The parties thereafter agreed to entry of a consent judgment granting the Diroffs fee title to Parcel B, while granting plaintiff and the other property owners in the subdivision a nonrecreational easement over a 20-foot wide path across parcel B to access Secord Lake. At the time, the Diroffs had a fence along the boundary of Parcel B and Vonda Lane. The consent judgment provided that the fence could remain but the Diroffs would create a 20-foot wide opening in the fence to allow access to the lake over Parcel B. The parties' attorneys agreed on the record as follows:

The 20 foot opening is specifically provided so that if a party easement holder wishes to, as part of the rights of ingress and egress, to launch a watercraft at that location a 20 foot wide opening would accommodate a trailer and the reasonable backing up abilities of the operator.

In June 2015, the trial court entered the consent judgment which provided, in relevant part:

2. . . . Diroff acknowledges or otherwise conveys in favor of the lot owners of the Supervisor's Plat of Baker's Resort . . . together with said lot owners' successors and assigns, an appurtenant non-recreational easement for ingress and egress access to and from the Tittabawassee River (a/k/a Secord Lake), across Parcel B to and from Vonda Lane (hereinafter the "Easement"). The Easement shall hereafter run to and with each and every lot of the Supervisor's Plat of Baker's Resort, in perpetuity, for use by those within the Supervisor's Plat of Baker's Resort. The Easement may also be used for the temporary mooring and launching of watercraft, including by boat trailer, but may not be used for non-temporary mooring, docks, and/or wharfs.

3. Diroff may maintain a split rail fence on the common boundary between Parcel B and the terminus point of Vonda Lane. The fence must contain a 20 feet opening in the middle of said fence to facilitate ingress and egress to and from the Tittabawassee River (a/k/a Secord Lake), specifically to accommodate the use of a boat trailer. The fence shall be reasonably constructed to maximize the view of the water.

4. Routine maintenance of the Easement will be both the right and the responsibility of Diroff. However, to the extent that any usage of the Easement creates damage to the surface of the Easement, the person(s) creating that damage shall be responsible for restoring the Easement to its pre-damaged state.

Several weeks after the consent judgment was entered, plaintiff filed a motion for contempt alleging that the Diroffs had failed to remove the barriers from the easement. The trial

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<sup>1</sup> The Diroffs have since sold their interest, which is currently owned by the Trust.



court declined to hold the Diroffs in contempt but ordered them to remove the barriers by August 31, 2015.

In April 2016, plaintiff again moved before the trial court to hold the Diroffs in contempt for failing to comply with the consent judgment by removing the barriers. Plaintiff also requested an order permitting him to alter the slope of Parcel B to enable him to launch a boat using a boat trailer. At the hearing on the motion, plaintiff conceded that the slope of the land was the same as it had been when the consent judgment was entered, but contended that it is virtually impossible to use a trailer to launch a boat from Parcel B given the steep incline of the bank. At the conclusion of the hearing on the motion, the trial court denied plaintiff's request to grade the easement. The trial court's order stated:

Plaintiff's request for a declaratory ruling that Plaintiff may adjust the grade/slope of the land on Parcel B to reasonably utilize the express easement (outlined in the Consent Judgment entered by this Court) for the launching of watercraft, including by boat trailer, is denied because having an easement granted to use an area as a boat launch does not convey with it the right to regrade or reslope the grade of land, as explained on the record.

On the record, the trial court reasoned that the consent judgment did not specify how a person could use a trailer to launch a boat, or that a trailer necessarily would be able to reach the water's edge. The trial court stated that plaintiff was permitted to use a trailer or other equipment to launch a boat, as long as plaintiff did so without changing the slope of the land. The trial court further denied plaintiff's request to hold defendants in contempt and for attorney fees.

This Court denied plaintiff's application for leave to appeal the trial court's post-judgment order.<sup>2</sup> In lieu of granting leave to appeal, our Supreme Court thereafter remanded the case to this Court for consideration as on leave granted.<sup>3</sup>

## II. ANALYSIS

This case involves the question whether plaintiff's proposed alterations to Parcel B fall within the scope of plaintiff's easement. Plaintiff argues that the trial court erred by denying his request to grade Parcel B because, in its current condition, it is impossible for him to launch a boat with a boat trailer on Parcel B, which is a permitted use of the easement. We disagree.

Generally, the extent of a party's rights under an easement is a question of fact which this Court reviews for clear error. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). A finding is clearly erroneous if, after reviewing the entire record, this Court is definitely and firmly convinced that the trial court made a mistake. *Augustine v Allstate Ins*

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<sup>2</sup> *Maniaci v Diroff*, unpublished order of the Court of Appeals, entered November 23, 2016 (Docket No. 333952).

<sup>3</sup> *Maniaci v Diroff*, 500 Mich 1057; 898 NW2d 585 (2017).

*Co*, 292 Mich App 408, 424; 807 NW2d 77 (2011). In addition, this Court reviews de novo the trial court's dispositional rulings on equitable matters related to easements. See *Blackhawk Dev Corp*, 473 Mich at 40.

The easement in this case was created by a consent judgment, which is the product of an agreement between the parties. See *Sylvania Silica Co v Berlin Twp*, 186 Mich App 73, 75; 463 NW2d 129 (1990). This Court interprets judgments entered by agreement of the parties in the same manner as contracts. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Although we apply contract principles to determine the scope of the easement created by the consent judgment, we consider the law related to easements to determine the scope of plaintiff's rights to enjoyment of the easement created by the consent judgment.

An easement is a limited right to use the land burdened by the easement, rather than a right to occupy and possess the land, and generally is limited to a specific purpose. *Schumacher v Dep't of Nat Resources*, 275 Mich App 121, 130; 737 NW2d 782 (2007), citing *Dep't of Nat Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378; 699 NW2d 272 (2005). The language of the instrument that granted the easement determines the scope of the easement holder's rights. See *Blackhawk Dev Corp*, 473 Mich at 42. "Where the rights of an easement are conveyed by grant, neither party can alter the easement without the other party's consent." *Id.* at 46.

The conveyance of an easement gives the easement holder "all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement." *Id.* at 41-42 (quotation marks and citations omitted). The use exercised by the holder of the easement must be reasonably necessary "to the proper enjoyment of the easement, with as little burden as possible to the fee owner of the land." *Id.* at 42. An easement holder's rights are paramount to the rights of the fee owner, but only to the extent stated in the grant of the easement. *Id.* at 41. "The existence of an easement necessitates a thoughtful balancing of the grantor's property rights and the grantee's privilege to burden the grantor's estate." *Id.*

"A party who enjoys an easement is entitled to maintain it so that it is capable of the use for which it was given." *Morse v Colitti*, 317 Mich App 526, 545; 896 NW2d 15 (2016). "The making of repairs and improvements necessary to the effective enjoyment of an easement . . . is incidental to and part of the easement." *Mumrow v Riddle*, 67 Mich App 693, 700; 242 NW2d 489 (1976). Improvements, however, receive closer scrutiny than repairs. *Id.* In this case, Parcel B was steeply sloped and sandy at the time the easement was granted, and it is unlikely that a person at that time could have launched a watercraft by backing a boat trailer itself into the water. Grading the parcel to alter the slope sufficiently to launch a boat from a boat trailer, therefore, would constitute an improvement to the easement, not simply a repair.

In *Blackhawk Dev Corp*, our Supreme Court recognized that "[a] fundamental principle of easement law is that the easement holder . . . cannot 'make improvements to the servient estate if such improvements are unnecessary for the effective use of the easement or they unreasonably burden the servient tenement.'" *Blackhawk Dev Corp*, 473 Mich at 41, citing *Little v Kin*, 468 Mich 699, 701; 664 NW2d 749 (2003). The Court in *Blackhawk Dev Corp* stated:

From these principles evolves a two-step inquiry: whether the proposed developments are necessary for the [easement holder's] effective use of its easement and, if the developments are necessary, whether they unreasonably burden [the] servient estate. Of course, the need to answer the second question is obviated where the first question is answered in the negative. [*Id.* at 42 (citation omitted).]

Applying the reasoning of *Blackhawk Dev Corp* to the present case, the trial court here did not clearly err in finding that adjusting the grade of Parcel B is unnecessary for plaintiff's reasonable use of the easement. Here, the easement grant expressly permits launch of watercraft by boat trailer. The easement grant does not define watercraft for purposes of the easement. A canoe or kayak is a "watercraft," as is a 20-foot power boat, or a 60-foot cabin cruiser. The term "watercraft" for purposes of the easement must necessarily be limited by the topography of Parcel B and the size of the 20-foot easement. Similarly, the easement provides for the launching of watercraft "including by boat trailer," implying that boats can be launched there by easement holders without the use of a trailer, presumably by carrying a canoe or a kayak from Vonda Lane down to the water's edge to launch the boat into the water. The easement grant also does not specify in what way a trailer could be used, or that the boat trailer must have access to the water itself. As the trial court observed, some boats could be offloaded by backing a trailer near the water's edge, while launching larger boats may necessitate a trailer used in conjunction with a ramp or other equipment. In other words, just because it is not feasible to back a boat trailer all the way to the water's edge does not prevent the easement from being used to launch boats, including with the use of a boat trailer, and plaintiff's desire to back his boat trailer all the way to the water's edge does not make it a requirement of effectively using the easement.

In addition, we note that the parties agree that the slope of Parcel B is unchanged from the time that the litigation began, and that neither the settlement agreement on the record nor the consent judgment suggests changing the slope of Parcel B. Because this issue presented itself for the first time long after entry of the consent judgment, we conclude that changing the slope of Parcel B was not contemplated by the parties and is outside the scope of the easement. Further, the consent judgment provides that "to the extent that any usage of the Easement creates damage to the surface of the Easement, the person(s) creating that damage shall be responsible for restoring the Easement to its pre-damaged state," suggesting that the parties intended that Parcel B remain in its existing condition.

Because we are not definitely and firmly convinced that the trial court made a mistake when it found that improvement of the easement by regrading its slope was unnecessary to the effective use of the easement as granted, we affirm the trial court's order. We further conclude that because plaintiff has not established that the trial court erred by declining to hold defendants in contempt, remand for a determination of damages and attorney fees is not warranted.

Affirmed.

/s/ Patrick M. Meter  
/s/ Michael F. Gadola  
/s/ Jonathan Tukel